

September 1, 2022

VIA ECF

The Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10007

Re: *Nypl, et al. v. JPMorgan Chase & Co., et al.*, Case No. 1:15-cv-9300 (LGS)

Dear Judge Schofield:

Pursuant to Rule I.D.3 of Your Honor's Individual Rules and Procedures for Civil Cases, the parties respectfully seek leave to file under seal limited portions of the papers in support of and in opposition to defendants' motion for summary judgment (the "Parties' Submissions") as set forth below.

Certain portions of the Parties' Submissions quote directly from or otherwise refer to documents that have been designated as "Highly Confidential" under the Stipulation and Order of Confidentiality (hereinafter the "Protective Order") because they contain "material regarding trading and investment strategies, pricing and cost information, customer lists, business strategy, trade secrets and other commercial or financial information, the disclosure of which to another Party or non-party would create a substantial risk of causing the Disclosing Party to suffer significant competitive or commercial disadvantage" (ECF No. 249 at 2-3.) In particular, these documents disclose confidential, proprietary information concerning how each bank sets retail foreign exchange rates for the purchase of physical foreign currency at its retail branches in the United States. Because the process used to set these rates reflects confidential pricing information and sensitive business strategies, the parties respectfully request that it not be disclosed publicly. (See ECF No. 597, July 20, 2020 Order (granting plaintiffs' motion to seal portions of a joint letter containing similar information for this reason).) The proposed redactions in the Parties' Submissions are narrowly tailored to ensure that the bulk of the Parties' Submissions will be publicly available on the docket, and are consistent with the redactions made in the parties' papers in support of and in opposition to plaintiffs' motion for class certification and accompanying *Daubert* motions, which this Court permitted to be filed under seal. See ECF No. 778 (Mar. 21, 2022 Order granting joint letter request to file under seal).

As the Court knows, the Second Circuit has recognized that the right of public access to judicial documents is not absolute and "the court must balance competing considerations against it." See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). For instance, documents may be sealed where "closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.*; see also *Nixon v. Warner Commc'ns., Inc.*, 435 U.S. 589, 599 (1978) ("[T]he decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case."). Cf. *Burke v. Glanz*, No. 11-cv-720, 2013 WL 211096, at *4 (N.D. Okla. Jan. 18, 2013).

("Courts should be wary of modifying a protective order where a party has complied with discovery in reliance on the agreement.").

Pursuant to Rule I.D.3 of Your Honor's Individual Rules and Procedures of Civil Cases, the parties have prepared highlighted versions of the Parties' Submissions that they propose to file in redacted form and in unredacted form under seal. The parties believe that these proposed redactions strike the proper balance between public access to court documents and protection of confidential business information. Further pursuant to Rule I.D.3 of Your Honor's Individual Rules and Procedures for Civil Cases, attached hereto as Appendix A is a list of all parties and attorneys of record who should have access to the sealed documents.

Respectfully submitted,

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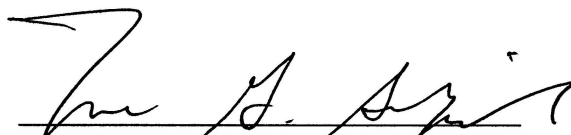
Application GRANTED in part and DENIED in part without prejudice. To the extent the redactions -- in the parties memoranda of law, Local Rule 56.1 statements and certain exhibits -- are narrowly tailored to protect competitively sensitive information about how Defendant banks set retail prices for foreign currency, Defendants' interest in the confidentiality of that information outweighs the presumption of public access in this instance. However, the parties have offered no explanation for why they seek to redact information about how the government set the amounts of fines imposed on certain Defendants, nor any justification for filing entire exhibits under seal that cover topics other than the competitively sensitive information discussed above.

By **February 10, 2023**, each party shall file a renewed letter motion to seal, attaching more lightly-redacted versions of any documents that can be filed in part on the public docket, and specifically explaining why any remaining redactions are narrowly tailored to protect a confidentiality or other interest that outweighs the presumption of public access.

In the meantime, the Clerk of Court is respectfully directed to maintain under seal all documents currently filed under seal.

Dated: January 31, 2023

New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

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*Signatures used with permission pursuant to S.D.N.Y. ECF Rule 8.5

APPENDIX A

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